IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 353 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRIT AMBALAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 353 of 2003

MR KR RAVAL for Petitioner No. 1

Mr S S Patel, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 10/10/2003

ORAL JUDGEMENT

Rule. Mr S S Patel, learned APP waives service of notice of rule for the State.

2. This is a revision application under section 397 read with section 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code') dated 31.3.2003 recorded by the learned Special Judge, (ACB), Court No.2, Ahmedabad in Special Case No.7 of 1998 dismissing an application at Exh.11 filed by the present petitioner as an accused person in the said special case. The peitioner submitted the said application Exh.11 before the trial court stating that the investigating agency has submitted charge sheet on 16.3.1998 and there the sanction accorded by the concerned officer has been produced on record. It was the say of the petitioner before the trial court that the sanction was not accorded by the competent authority and, therefore, it is not legal and valid sanction and without valid and legal sanction against the petitioner, the prosecution cannot go against the petitioner and therefore, the proceedings may be dropped and the petitioner be acquitted or discharged. The matter was heard by the trial court and there it has been observed by the trial court that the present application has been filed after framing of charge. It has also been observed by the trial court that once the charge has been framed in the matter, the trial is required to proceed and the proceedings cannot be dropped merely on the strength of the application given by the applicant to drop the proceedings. In the light of the above discussion, the trial court found that there was no substance in the contentions raised by the petitioner and, therefore, the application was dismissed. It is required to be considered that the trial court has not stated in the order that the said issue could be decided of even after recording of evidence. This means that the trial court has terminated the said issue finally. An issue as to validity of a sanction would be an important issue which was required to be dealt with by the trial court. If the trial court framed charge and evidence was required to be recorded and the above issue could be deferred then the position would have been different. Here the issue has been finally terminated by the trial court.

3. In above view of the matter, after hearing it is found that the petitioner should be at liberty to take up the issue at the stage of final hearing after conclusion of evidence and after recording of further statements of the accused under section 313 of the Code. There it may be open to the petitioner to show to the trial court that sanction was not legally accorded by a competent authority. This has not been done and, therefore, to that extent, the order of the trial court is illegal and, therefore, it is necessary for this court to interfere

with the said order in exercise of revisional jurisdiction.

4. For the foregoing reasons, this revision application is partly allowed. The order passed by the trial court which is impugned in this revision application is ordered to be set aside. The trial court will consider and decide the above issue during the course of judgment, if such an issue is raised at the stage of agrument. Rule is made absolute to the aforesaid extent.

[D P Buch, J.]
msp